IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2125 OF 2004

Suresh Narayan Rege .... Petitioner
Vs.
The Saraswat Co-operative
Bank Ltd. & others .... Respondents

Sarvasri Girish Godbole i/b Lalit Jain
for the Petitioner.

Shri Y.R. Naik for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: AUGUST 30, 2004

P.C:

Heard the learned Advocates for the parties.

The learned Advocate for the petitioner has submitted written submissions which read thus:-

"1. Even by agreement, Parties cannot confer jurisdiction on any Court or Authority. The Co-operative Court is established under Maharashtra Co-operative Societies Act, 1960 and only if the provisions of the said Act are applicable, the dispute can be filed in the Co-operative Court. After the Respondent No.1 is registered under the provisions of Multi State Co-operative Societies Act, 1984, Section

18 of the said Act will operate and Respondent No.1 will cease to be a Co-operative Society under the MCS Act, 1960. Consequently, the decree passed by Co-operative Court is entirely without jurisdiction. This submission is squarely supported by Judgment in the case of Karashiddhayya Vs. Shri Gajanand Urban Co-operative Bank Ltd. reported in 45 BLR 553 which was dealing with the provisions of Section 54 of the Bombay Co-operative Societies Act, 1925. In the said judgment it is specifically held that even by consent of parties jurisdiction could not have been conferred on the Registrar.

2. In so far as the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are concerned, the said provisions have clearly an overriding effect and right from the date of establishment of DRT in Maharashtra, all Courts and Authorities including Co-operative Court, will cease to have jurisdiction. Therefore, the decree, though a Consent Decree, passed by a Co-operative Court is a nullity since it lacks in inherent jurisdiction and is therefore, "Coram-Non-Judis." Though Judgment of Full Bench

is stayed by Supreme Court, the earlier Division Bench Judgment and in any case provisions of 1993 Act are not stayed and stay order of Supreme Court cannot confer jurisdiction.

3. Reliance is placed on the observations of Hon'ble Supreme Court of India in para 18 & 19 of the Judgment in case of Chirajilal Goenka Vs. Jasjitsingh (1993) 2 SCC 507.

4. Though, these grounds were raised in the Review Petition filed by the Petitioner, the order in the Review Petition cannot operate as Res-Judicata for the following reasons:-

(a) In the original petition being Writ Petition No.2195 of 2002 itself order is passed (page No.254 of the additional compilation) in which no reasons are recorded by the Division Bench of this Hon'ble Court on the question of jurisdiction and hence there is no conclusive determination of the issue involved/raised in the Writ Petition. The Writ Petition was in fact, summarily dismissed. Therefore, one of the essential ingredient for applicability

of the doctrine of Res-Judicata is not existing.

(b) Even while dismissing Review Application by order dated 8.1.2003 (page 331 to 333 of the additional compilation) there is no conclusive determination about the question of decree being a nullity and in fact, it is observed as thus:

"Although this contention was raised in the Writ Petition, in the points formulated in para-C of Synopsis, the contention was not pressed"

The order further indicates that Petitioner was not permitted to raise the said contention. Therefore, there was neither any determination of the issue of the jurisdiction, nor any decision thereon.

(c) Even SLIP filed by Petitioners was summarily dismissed (see page 341 of additional compilation) and hence there was no question of merger of the order

of the Hon'ble High Court in the order of Supreme Court, since in the absence of any leave being granted, there is no registration of appeal and no merger.

5. Consequently, by relying on the observations in the Judgment of the Hon'ble Supreme Court of India in AIR 1954 S.C. Page 340 in the case of Kiran Singh Vs. Chaman Paswan, it is submitted that the ground of nullity of an order can be set up at any stage either at execution or even in collateral proceedings.

In this regard, reliance is placed on the following observations of the said Judgment:-

"It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon at the stage of execution and even in collateral proceedings. A defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at

> the very authority of the Court to pose any decree, and such a defect cannot be cured even by consent of parties."

It is not necessary to deal threadbare with all the contentions which are sought to be raised by the learned Advocate for the petitioner and which are produced hereinabove. Suffice to say that this is nothing but an attempt to have a second round of litigation in respect of a matter which has been finally concluded by the order passed by the lower authorities and confirmed by all the higher Courts, including the Apex Court. The point of jurisdiction was sought to be raised by the petitioner even at the initial stage and the same was rejected by this Court and the petitioner could not secure any favourable order in the proceedings sought to be initiated by way of S.L.P. before the Apex Court. It was sought to be contended that rejection of the S.L.P. does not lay down the binding law. There cannot be any quarrel about the same but the same will be good as far as strangers to such proceedings are concerned. As far as the parties to such proceedings are concerned, they are bound by such order and they cannot seek to reopen the issue merely because there is no detail order on the issue in the S.L.P. proceedings. Undoubtedly, the issue was sought to be agitated by the parties in the proceedings prior to the disposal of the

matter in the S.L.P., and rejected by a speaking order.

Considering the facts and the circumstances of the case, the point which is sought to be raised by the petitioner having been already concluded by the order by this Court, there is no case for entertaining this petition and the petition, therefore, is rejected in limine.